

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THE LONG ISLAND RAILROAD
COMPANY,

Plaintiff,

v.

ATLANTIC TRACK & TURNOUT
COMPANY,

Defendant,

v.

STRONGWELL, INC.,

Third-Party Defendant.

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NICHOLAS G. GARAUFIS, United States District Judge.

Three motions are currently before the court: Atlantic Track & Turnout Company's ("ATT") Motion for Summary Judgment (Docket Entry #28), Strongwell, Inc.'s Motion for Summary Judgment (Docket Entry #34), and ATT's Motion to Bar Trial Testimony of Plaintiff's Expert, Juan Zaccarini (Docket Entry #29). The court has consolidated these motions and will issue one memorandum and order ruling on the three motions.

After reviewing the parties' submissions, the court has determined that, while the underlying facts in ATT's Motion for Summary Judgment are largely undisputed, the court requires additional briefing on the legal issues raised in ATT's Motion. The court directs both ATT and LIRR to file supplemental memoranda of law addressing the following issues:

1. Whether each delivery shipment of the 2002 Tie Extensions separately triggered the running of the statute of limitations. The parties shall also address the effect, if any,

of Section 31 of the 2002 Contract on the accrual date of the cause of action for breach of express warranty.

2. Whether LIRR modified or waived the LIRR's Specifications in the 2002 and 2004 Contracts, either by express agreement or by course of conduct. The parties are directed to address – in detail – the applicability of portions of New York's Uniform Commercial Code concerning written modifications and/or waivers (2-209) and disclaimers of implied warranties (2-316). The parties shall also address the relevance, if any, of Section 6 – entitled "Changes" – of the 2002 Contract, which neither party has mentioned anywhere in its materials.

The court sets the following schedule for the supplemental briefing: ATT shall serve its supplemental brief no later than May 25, 2009, LIRR shall serve its response no later than June 12, 2009, and ATT shall electronically file all of the supplemental briefing, including any reply, no later than June 22, 2009.

SO ORDERED.

Dated: Brooklyn, New York
April 27, 2009

s/Nicholas G. Garaufis

NICHOLAS G. GARAUFIS
United States District Judge